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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,455	06/23/2003	Rosenberg Meir	COD5001	9738

27777 7590 08/25/2005  
PHILIP S. JOHNSON  
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NEW BRUNSWICK, NJ 08933-7003

EXAMINER

DEAK, LESLIE R

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/601,455	MEIR, ROSENBERG	
	<b>Examiner</b>	<b>Art Unit</b>	
	Leslie R. Deak	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/23/03, 3/21/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because they are faded in some parts and contain copy machine marks. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 15-17, 21, 24, and 38-40 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,585,677 to Cowan, Jr. et al. Cowan discloses a shunt with catheters 28 and 34, a master control unit 24 that comprises a valve-gauge assembly 52 with pressure gauges or sensors, a valve to control fluid flow, and a microprocessor that receives and interprets inputs from the pressure gauges to control the valve and fluid flow (see column 5, lines 10-35). The processing units of the valve-gauge assembly are connected to a transmitter 64 that acts as an antenna to transmit data from the valve-gauge assembly to a wireless receiver and external computing device located proximal to a patient (see column 6, lines 1-15). The external computing device may further process the signals or merely report them in a readable format. Applicant recites claim limitations drawn to the mode of operation of the controller. Such a limitation is regarded as a recitation of the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Furthermore, it is the position of the examiner that the microprocessor of the Cowan device may be programmed to perform the operations claimed by applicant.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6-14, 18-20, 22-23, and 25-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,585,677 to Cowan, Jr. et al. Cowan discloses the apparatus and method as claimed with the exception of specifically reciting a third and fourth pressure gauge or sensor in the device. Cowan discloses that his device comprises several sensors, including pressure gauges. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a third and fourth pressure sensor, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. See MPEP 2144.04. Similarly, mere repetition of the steps in a method is an obvious variation on a method disclosed in the prior art. With regard to applicant's claims drawn to the location of the CPU or microprocessor inside or outside the housing, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the CPU inside or outside the housing, since it has been held that rearranging parts of an invention involves only routine skill in the art. See MPEP 2144.04. With regard to applicant's claim drawn to a differential pressure sensor, such a sensor involves two discrete parts that measure and calculate the difference in pressure in separate locations, much like the separate sensors and microprocessor of the Cowan device operate. IT would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the discrete units into a differential pressure sensor, since it has been held that forming in one piece an article what has formerly been

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formed in multiple pieces and put together involves only routine skill in the art. See MPEP 2144.04.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- a. US 6,470,213 Alley
  - i. Implantable medical device with valve, pressure sensors, and telemetry apparatus
- b. US 6,783,499 Schwartz
  - ii. Implantable telemetric sensor
- c. US 6,926,670 Rich et al
  - iii. Sensor and wireless receiver for medical management

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie R. Deak whose telephone number is 571-272-4943. The examiner can normally be reached on M-F 7:30-5:00, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lrd   
16 August 2005

**TATYANA ZALUKAEVA**  
**PRIMARY EXAMINER**

